

HON. S. T. WORCESTER'S CHARGE,
To the Grand Jury of the Sandusky County Common Pleas Court, Fremont, May 13, 1861.

DEFINING TREASON.

GENTLEMEN:—In addition to what I have said in respect to your general duties as Grand Jurors, it seems to me proper in the present unhappy and distracted condition of our country; to call your attention to an act defining and punishing *Treason*, passed at the present session of the Legislature. *Treason* is said to be the highest and most flagrant crime known to the law.—The government under which a person lives is bound to protect him, and he on his part is returned for that protection, owes it allegiance and fidelity, and in all proper ways is under obligation to support and maintain it. The purpose of the person who commits *Treason* is to subvert and overthrow, or to aid in subverting and overthrowing his government. The wrong that is committed by a man who is guilty of ordinary crimes, such as murder, robbery or larceny, involves in its end consequences in common cases, but a very few persons. But not so with *Treason*. The constitution, laws, and customs of a nation are established and maintained for the common protection, safety and well being of all the subjects of the government, and all who may be within its limits. When these are subverted or destroyed, the indispensable safeguard for the protection of all the interests of society are swept away. Anarchy, discord and excess follows, and all are involved in common danger and ruin. There is no longer any adequate and proper security for the life, liberty or property of any one. Such are some of the consequences of successful *Treason*.

For several months past the people of seven or more of the States belonging to this Union have been and still continue in open rebellion against the United States. It is not necessary or proper for me upon this occasion to comment upon the history of this rebellion, the causes that have led to it, or the reasons or pretexts upon which it is justified or excused by those now engaged in it. It is sufficient for my present purpose to refer to its acquiescent existence. The men who have set it on foot and who are now carrying it on, have at different places organized and armed military and naval forces in open and avowed hostility to the United States; and those forces are now in arms for the purpose of subverting our National Government. They have by force of arms captured and seized the mints, coin, ships, forts, arsenals, custom houses, arms, and munitions of war belonging to the United States, and not only still retain them, but are now using them as a part of their means to overthrow the government.

They have set up and claim to have established, within the limits of the United States a new government, known as the Confederate States, in hostility to the laws and institutions of the United States. Within the limits of this new government they have defied the laws and annulled the Constitution of the United States, and compelled its public officers to resign and abandon their official duties, or in case of refusal have forced them to leave the country. They claim to have absolved all persons within the limits of this new government from the allegiance due to the United States, and claim to have caused that allegiance to be transferred to the Confederate States. They have levied and are now carrying on war against the United States, and have assumed in all ways the character and attitude of *public enemies*. All concerned in this movement, under the laws of the United States, are guilty of *Treason* to the Government, and are now in open rebellion; and the President of the United States, in order to prevent the destruction and overthrow of the government, and to protect the National Capital, has been compelled to call out the military forces of the country for the purpose of suppressing this rebellion. The relations then, now existing between the United States and the so-called Confederate States, are those of actual war, and these relations are to be governed and controlled by laws applicable to a state of war.

It was in view of this distracted and calamitous condition of the country, that our State Legislature for the first time since our State has been organized, has thought proper to pass an act such as the one to which I have referred for the punishment of *Treason*. The Constitution of the United States defines what acts shall constitute *treason* to the General Government, and a law of Congress passed in the year 1790, provides for its punishment *capitally*. Under this act of Congress this crime may be committed by any person who owes allegiance to the United States, and a person within the meaning of this law is said to owe allegiance to the government, who resides within its limits and enjoys the benefit and protection of its laws, whether a native or foreign born. The subjects of the law of this State to which I have referred are *persons residing* in the State, and it provides for both the punishment of *Treason* against the United States and the State of Ohio. It is entitled "An act for the punishment of *Treason*." The first

section of the law enacts, that—

"If any person or persons residing in this State shall levy war against this State or the United States or shall knowingly adhere to the enemies of this State or the United States giving them aid and comfort, shall be deemed guilty of *Treason* against the State of Ohio, and on conviction thereof, shall be imprisoned in the penitentiary during life."

This section, as will be seen, involves and defines two distinct crimes. 1st: The levying of war, against this State or the United States. 2d: Adhering to the enemies of either, giving them aid and comfort.

The Constitution of the United States defines *Treason* to the United States substantially as it is defined in this law. It makes it consist in levying war against the government of the United States or in adhering to its enemies, giving them aid and comfort.

It is highly honorable to the people of the United States, as well as creditable to our Government, that the crime of *Treason* has been very rare, and consequently, we have very few judicial decisions giving a construction to the language used in the Constitution defining *Treason*, or showing what overt acts are to be regarded as levying war or adhering to enemies, giving them aid and comfort. The question as to what constitutes the levying of war, within the meaning of the law, appears to have been more fully considered in the case of the United States vs. Burr, decided in the year 1807, than in any other reported case. In that case the court appears to have found that there was a conspiracy for levying war; that a treasonable purpose existed on the part of Burr, but that the crime of *Treason* had not been consummated for the reason that no armed assemblage of men had been collected for the purpose of executing the treasonable intent of the conspirators, or in other words, that no war had been levied against the United States. It would seem then, that in order to constitute the crime of *Treason*, by levying war, it is necessary that there should not only be a conspiracy with the criminal intent to commit *treason*, but that also there should be an armed force assembled for the purpose of establishing that intent. "The levying war," means literally the making or creating war, and those persons levy war who associate together in armed force to make it and carry it on. So after a war is once commenced, those who give it aid afterwards are equally guilty with those who originated it. And in the case referred to, or rather in the case against Bolman et al, growing out of it. Chief Justice Marshall in giving the opinion of the court further says, "It is but the intention of the court to say that no person can be guilty of this crime who has not appeared in arms against his country. On the contrary, if war be actually levied—that is, if a body of men be actually assembled, for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scenes of action, and who are actually in the general conspiracy, are to be considered traitors."

It is not necessary for me to specify the many and various overt acts that would be regarded as levying war, within the meaning of this law. But some of these acts are so unequivocal in their nature as to leave little or no doubt of the guilt of the person who commits them. Of this character would be the voluntary performance of military service in the army of the enemy. So if war shall actually exist at the time the voluntary enlistment of a soldier or sailor in the military or naval service of the enemy, would unquestionably be *treason*, whether the party should actually join the armed forces of the enemy or not. So if a person be in league with the enemy, knowing their purposes, should act as a recruiting officer, and enlist men in their service, or should purchase provisions or munitions of war for them of any sort, he would undoubtedly be held guilty of levying war. These instances will serve to illustrate the subject by a few of the many examples that might be named; and it will be unnecessary to go more into detail.

The second kind of *treason* mentioned in the act referred to, is the adhering to the enemies of the State or of the United States, giving them aid or comfort. The statute itself does not define what is meant by adhering to the enemies of the State, or what acts would be regarded as giving them aid and comfort within the meaning of the law, nor so far as I am aware, have there hitherto been any judicial decisions of the courts in this country, giving a construction to similar acts, that will furnish any considerable aid in giving a construction to this. It must therefore be left to the courts, that may be now called on to interpret and explain this law, to gather the intent and purposes of the legislature upon the words of the law by applying to it the ordinary rule of construction applicable to such cases. Adhering to the enemies of the State as I understood the law, means the being attached to the enemies of the State, and the taking their part or taking sides with them. One may be at heart and in thought on the side of the enemy, and he may wish their success against his own country, and he may publicly express his attachment to them, and his wishes for their success in words and in writing. But this alone would not be *treason* in the eye of the law. It would be strong evidence of disloyalty to the government. It might be moral *treason*, and be sufficient evidence of a disposition and purpose to commit *Treason*, in case an opportunity should be afforded. But in order to constitute the crime of *Treason* under this definition of it—a person must not only adhere to the enemy of his country by having the disposition and purpose to favor them, but he must also commit some overt act with intent to aid or comfort them. And I have no doubt that if a person was guilty of such an overt act, done with the intent to aid and comfort a public enemy, that the proof of such act, would of itself be sufficient evidence of adhering to the enemy within the letter and meaning of the law. In order then for a person to be guilty of *Treason* under the second definition in this statute, it is necessary that he should do some overt act with the intent to aid and comfort the enemies of the State and the United States, and to promote their hostile designs.

The acts that a person may do in violation of this part of the statute are very numerous. I need only call your attention to a very few of them. Persuading men to enlist in the service of the enemy, paying them money to do so, acting as a recruiting officer, or as an agent of a recruiting officer, would be a clear violation of the law. So the furnishing arms or munitions of war of any sort, Horses, Carriages, Railroad Cars, or Vessels for transportation of troops, arms or military stores, knowing the purpose for which they are to be used; would be affording aid and comfort within the meaning of the law. So the giving or selling to enemies, or to any person acting as their agent, any provisions or supplies of any kind, for the sustenance or maintenance of a hostile force, or knowingly disposing of provisions or supplies in such a manner that they would be likely to fall into the hands of the enemy, would be giving aid and comfort contrary to the intent of the law. So the acting as a Spy for public enemies, or communicating to them information by writing, verbally or by telegraph, or in any other mode, with the intent and purpose of aiding them in their hostile purposes and enterprises against the State or United States, would also be *Treason*.

I have said that words alone, under our law, however disloyal, do not constitute *Treason*. The law, in this country not only tolerates, but it protects and encour-

ges both the freedom of speech and of the Press. Our people have the legal right to entertain such political sentiments as they please, or as they may believe to be true, without being responsible for them to the law; and they have also the legal right to speak and publish their sentiments at such proper times and upon such occasions as they may choose, without being called to account for them. If a man really entertains treasonable sentiments and opinions, it is perhaps as well for the public safety; in most cases, that he should have full liberty to express them freely. In such case his opinions and feelings become known, and in times of public excitement like the present, his actions are very sure to be closely watched, and the unrestrained expression of such opinions is more sure to be attended with danger and injury to the person who entertains them, than to the public.

It is therefore not only illegal to attempt to suppress the utterance of such opinions, by force, threats, or intimidation, but in my judgment, it is no way conducive to the public good, and even if it did, we have no right to do evil that good may come. When a man has violated the law by the doing of some overt act which brings him within its letter and spirit, it is right, and the public welfare demands that he should be vigorously prosecuted, and severely punished. But the law in this State, as I have said, does not make it a crime to entertain and publish disloyal opinions. It is unquestionably, in my view, morally wrong either to entertain or express them, and in times of high excitement it is acting very imprudent to make them known publicly. But in case it is done, those who may chance to hear them, have no right to apply what they may suppose to be the defects of law, by threats or acts of persecution, or violence, which in themselves are a clear violation of the law. I have called your attention to the subject not because I have heard that any acts have been committed in the county in violation of the law to punish *Treason*, or that there have been any violent abuses of the freedom of speech or of the Press. But it is possible that such cases have occurred, or may do so, and it is proper that not only yourselves, but that all well disposed and loyal citizens, as well as those, if such there be, should understand what the law in this respect permits, and what it forbids and punishes.

Yesterday's Report.

Washington, May 12.—The Messrs. Gallatin, of the New York Chamber of Commerce, were in consultation with Secretary Chase Friday about the new loan. Yesterday the Secretary invited offers for the \$9,000,000 disposed of under the act of February, which does not restrict offers to par. This call requires 10 days advertisement only. It is understood the Secretary though authorized to reject offers below par and resort to Treasury notes, will accept all offers at or about the current market rates and not resort to Treasury notes until after the expiration of the thirty days advertisement for the balance of the loan.

Preparations being completed for effectually blockading Virginia waters, Captain Pendegrast has given notice of fifteen days for all vessels to leave ports in that State, with or without cargoes. Several foreign Ministers and some Americans have asked for an extension of time; but in every case have been refused. The order will be adhered to imperitively.

Persons, though representing themselves to be Union men, are denied the privilege of forwarding locomotives to Tennessee, for the reason among others that such machinery might be used in transporting hostile troops. The Government also takes care that coal for steam purposes shall not be transported to disloyal states. Information having reached Navy Department late last night that several small vessels had been fired at from the Virginia shore and an effort made to detain them by the Alexandria authorities in order that the cargoes of fish, instead of being brought to Washington, might be used for secession troops, the Secretary ordered the Pawnee to stop the lawless proceedings. In addition to the national vessels, about 20 armed steamers from New York, Baltimore and Philadelphia have been or are being put in readiness for blockading.

New York, May 12.—The Baltimore correspondent of the Tribune of Saturday, says: Bands of Virginians joined by Baltimoreans, have advanced from Harper's Ferry and seized Monocacy Bridge and Frederick Junction and expected to throw a detachment into Frederick City.

A Polish gentleman, formerly a Colonel in the Polish Legion, was tendered a high position in the Southern Army by Governor Moore, of Alexandria, who at the same time requested him to bring drawings of the fortifications in the harbor. He replied that his next visit South would be as an enemy to traitors to the flag of his adopted country.